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# The Relation of Earning Power to Award of Compensation for Disability Incurred Military or Naval Service

A Memorandum on the Pensions Practice of Other Nations

Prepared at the request of the Bureau of War Risk Insurance  
by the Red Cross Institute for Crippled and Disabled Men

By Douglas C. McMurtrie

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## Relation of Earning Power to Award of Compensation Disability Incurred in Military or Naval Service

One of the most important factors in the administration of compensation or pensions for disability incurred in military or naval service is the determination as to whether or not earning capacity shall influence the amount of the award.

Because the fundamental object of national pensions has been to compensate a man for a loss in effectiveness and capability due to active service, it has been a natural deduction that the amount of the pension should be based on the actual reduction in earning power, and that where an injured man has been able to return to employment in which he earns as much or more than he did before the injury, no prejudice to effectiveness has ensued, and no pension, therefore, should be paid.

On the argument that the country should not be expected to pay compensation for an economic handicap when no economic handicap exists, the practice of making pension dependent on earning power might be regarded as sound, were it not for a vital social consideration. A man returns from the war with health or strength impaired, and is awarded a pension based on the average expectation of loss of earning power of a man in his physical condition. Being a man of character and ambition, however, he is not content to remain idle, so he seeks assiduously for a job which he can fill, finds it, and starts to work. Upon making report of his earnings—though his state of health be no better, and perhaps worse—his pension is suspended. It is certain that an average man who has once lost his compensation on account of getting a job will never make the same mistake again.

Yet it is infinitely to the advantage of the community that the idle man shall be set to work; that the inactive consumer be made a producer. And the loafer in the making is a much greater liability to the community than the obligation for the pension payments. This consideration has led, in experience, to the almost universal decision that pension should not be influenced adversely by a man's earnings; that the injured ex-service man should receive every encouragement to return to employment.

There is another argument in favor of this decision: that impaired physical condition always involves personal inconvenience, and usually imposes limitations on range of activity in both work and play. This is a distinct loss to the individual, and it seems fair that the government should pay compensation on this basis alone. The man who has developed active tuberculosis in the military service can never again be quite free from the bondage of a hundred precautions. Life will not mean quite as much as it did before. The soldier who has lost one leg through amputation will forever be subject to the inconvenience of his stump chafing in hot weather, and he will never again be able to play a game of tennis, although he may be able to attain a weekly wage as great as that earned prior to enlistment.

With respect to cases of specific permanent disability, whether partial or total, there has been practical unanimity of decision among the belligerent nations that compensation award should be fixed and irrevocable, and not influenced by earnings or earning power. The specific disabilities are typified by amputations, blindness, etc. The ruling of the United States has been clear and satisfactory with respect to such disabilities.

With respect to non-specific disabilities the decision has not followed quite the same rule, and compensation has been cancelled in some cases when it was shown the claimant had returned to work. Among the non-specific disabilities are scores of a medical nature, typically represented by phthisis, cardiac insufficiency, kidney difficulties, etc. Should these disabilities also be compensated on the basis of medical evidence alone, without respect to the current earnings of the claimant? It is possible that the experience of the allied nations may provide evidence helpful to a wise determination on this point.

As will be evident from the subjoined memoranda on the pensions practice of our allies, there has been substantially complete unanimity of decision that earning should have no influence on the award in cases of non-specific as well as in cases of specific disabilities.

Most of the countries learned early that such a ruling must be made if there were to be any degree of success with the programs of re-education looking toward returning the injured men as self-supporting members of the community. Great Britain altered her practice later than the others, but meanwhile developed a most convincing demonstration of the necessity of the change. And once the important decision was made, there was energetic educational effort, through posters, leaflets, press articles, and the like, to bring the ruling to the knowledge of the men in military and naval service.

The general consensus of experience has, in effect, developed the principle that pensions or compensation authorities have no concern whatever in the earnings of the claimant, and that the amount of the individual's earnings should not even be asked. The corollary to this principle is, of course, that the award should be based wholly on medical or surgical record or examination.

The following memoranda on the practice of several countries have been prepared in the Research Department of the Red Cross Institute for Crippled and Disabled Men. The source of the data is in all instances indicated by footnotes.

### FRANCE

Up to the passage of the new French pension law in March of this year, a French soldier, disabled as a result of service, received either a pension or a gratuity. Pensions were governed by the law of 1831 and were granted only for a disability which was adjudged incurable and of a certain degree of gravity.<sup>1</sup> Indemnities for lesser disabilities and for disabilities of any degree which could not be definitely pronounced incurable

<sup>1</sup> Loi. 11 avril, 1831, art. 12, 13, 14. In: Valentino, Ch. Militaires blessés et infirmes. Réformes, gratifications, et pensions. Paris, 1918, p. 47-48.

were governed by the decree of March 24, 1915, and were called renewable gratuities. By this decree renewable gratuities were divided into eight classes, corresponding to proportional decreasing reductions of the normal working capacity. Total abolition of the working capacity, 80 per cent. reduction, or 60 per cent. reduction, not, however, incurable, entitled a man to a gratuity of the first, second, or third class, respectively. Reductions of from 50 to 10 per cent., incurable or not, entitled to gratuities of the fourth to the eighth class.<sup>1</sup> The disability had to occasion at least 10 per cent. reduction of the working capacity to be entitled to any gratuity; if it occasioned 60 per cent. or over, and was incurable, it entitled to a pension.

The amounts of the different classes of gratuities were fixed by the same decree, modified by the decree of December 29, 1917. They ranged for a private soldier from 100 francs a year for a 10 per cent. disability to 1,200 francs for total disability. For the same degree of disability they conformed to the scale of pensions.

In the new pension law the word gratuity is replaced by temporary pension, and the only distinction between the permanent pension and the temporary pension is in the matter of incurability. A man is entitled to a permanent pension "when the disability caused by the wound or sickness is recognized to be incurable"; to a temporary pension "when the disability is not recognized to be incurable."<sup>2</sup> This new law also abolishes the eight classes of gratuities and the old pension scale, and grades permanent and temporary pensions by a scale of disability increasing by fives from 10 to 100 per cent.<sup>3</sup> The amounts range, for a private, from 240 to 2,400 francs a year.

The amount of the gratuity, now called the temporary pension, has depended wholly upon the man's physical condition, that is, upon the gravity of his injury, as determined by the medical examiners of the Discharge Commission. It has been the duty of the examiners to pronounce on the origin, gravity, and curability of the disability, and on the basis of the facts to propose the man for a certain pension or gratuity.<sup>4</sup> In deciding what reduction of the working capacity is occasioned by a given condition, or in other words what should be the amount of the indemnity, the medical examiners were first instructed (*Instruction du 20 avril 1915*) to refer to the figures established by the application of the workmen's compensation law.<sup>5</sup> It was soon seen, however, that such instructions were insufficient to secure uniformity in the estimation of disabilities; men with the same injuries were differently rated by different physicians. To avoid the injustice and the inevitable demands for revision resulting from this situation, the *Commission Consultative Médicale* of the War Department drew up a table (*Guide-Barème des Invalidités*) which listed in detail the different injuries and indicated the corresponding reduction of working capacity. The object, as the introduction to the tables states, was not to impose upon the examining physicians a fixed evaluation of each injury but to furnish, as the name implied, a guide which would contribute toward securing uniformity.

<sup>1</sup> Décret du 24 mars, 1915. In: Dalloz. Guerre de 1914. Documents officiels. Paris, 1915, iv, 50-51.

<sup>2</sup> OBELLIANE, E. Les pensions des victimes de la guerre. Nouvelle loi du 31 mars 1917 sur les pensions militaires. Paris, 1919, p. 6.

<sup>3</sup> *Ibid.*, p. 8.

<sup>4</sup> VALENTINO, CH. Militaires blessés et infirmes. Réformes, gratifications, et pensions. Paris, 1918, p. 106-107.

<sup>5</sup> FRANCE. Ministère de la Guerre. Guide-barème des invalidités. Paris, 1917, p. 3.

Diseases which may have been contracted or aggravated by reason of service are included in the table, but the French practice in the early days of war was to consider disability caused by disease non-attributable and to discharge such cases without pension. The new law makes sickness attributable unless the state can prove the contrary.<sup>7</sup> A new *Guide-Barème* has been issued to go with the new pension law.

The renewable gratuity was granted for two years, and at the end of that time the recipient was required to appear before the Discharge Commission and to undergo a new medical examination. On the basis of the findings of the doctors the gratuity was then renewed for another two years—at the same rate if there had been no change in the condition, at a higher rate if the condition were worse, at a lower rate if it had improved. If the disability was recognized to be incurable, the gratuity was converted into a life pension; in case of a cure, it was discontinued entirely.<sup>8</sup>

The temporary pension of the new law is similarly granted and reviewed, but after four years at the most the condition of the pensioner is to be considered permanent and the temporary pension either converted into a permanent one or discontinued. The new law also provides that "any recipient of a temporary pension who experiences a new complication or an aggravation of his disability can without waiting for the expiration of the two-year period send in a demand for revision which must be acted upon within two months."<sup>9</sup>

It is apparent, therefore, that the amount of the gratuity or temporary pension is not, either when it is first granted or when it is renewed, conditioned by what the man does or will earn. On this point M. Alexandre Lefas, deputy from Ille-et-Vilaine, in a report on French pensions presented to the Inter-Allied Conference in London in May of 1918, is specific and clear. He says: "Note that in virtue of the military laws the pension or gratuity due a disabled man is calculated solely on the basis of his disability and his rank, without consideration of what he may still earn by working."<sup>10</sup> Speaking before the Conference, M. Lefas added, "We have a medical table which fixes the rate of disability according to the wound. As a matter of fact what is considered is not the incapacity for work; for the disability pension is independent of the wages the man may earn by working and should be the same for all men of the same rank who have the same wound."<sup>11</sup>

The fear that the pension would be reduced if the earning capacity were increased operated, however, during the early years of the war to deter many disabled soldiers from taking re-educational training, and it was necessary for the government to combat this fear by repeated announcement of the real facts. A notice prepared by the *Office National des Mutués et Réformés de la Guerre* with the object of inducing more men to enter the re-educational schools, and signed by the two presidents of the Office, the Minister

<sup>7</sup> OBELLIANE, E. Les pensions des victimes de la guerre. Nouvelle loi du 31 mars 1917 sur les pensions militaires. Paris, 1919, p. 7.

<sup>8</sup> VALENTINO, CH. Militaires blessés et infirmes. Réformes, gratifications, et pensions. Paris, 1918, p. 139-140.

<sup>9</sup> OBELLIANE, E. Les pensions des victimes de la guerre. Nouvelle loi du 31 mars 1917 sur les pensions militaires. Paris, 1919, p. 7.

<sup>10</sup> INTER-ALLIED CONFERENCE (THE) ON THE AFTER-CARE OF DISABLED MEN. Reports presented to the conference. London, 1918, p. 27.

<sup>11</sup> INTER-ALLIED CONFERENCE (THE) ON THE AFTER-CARE OF DISABLED MEN. Supplement to volume of reports. London, 1918, p. 24.

of Labor and the Under-Secretary of State for the Health Service, states that "whatever their trade or their earnings, in no case will the pension of wounded soldiers be diminished [through re-education], even if they earn more than before being wounded."<sup>12</sup> Another notice on conditions of admission into vocational schools, issued by the Departmental Committees and based on circulars of the Ministers of War and the Interior, says: "The amount of the pension depends solely on the medical declaration of disability. In no case can it be modified by reason of the fact that the beneficiary has been re-educated. The amount of the gratuity may always be revised, in accordance with the functional condition, whether the soldier is re-educated or not."<sup>13</sup> This principle was finally made law by being incorporated in the Re-educational Act of January 2, 1918, article eight of which reads: "In no case can the amount of the pension be reduced because of vocational re-education or readaptation to work."<sup>14</sup>

#### GREAT BRITAIN

Previous to the issuance of the Royal Warrant of 1917, British pensions were based upon the decrease in earning capacity caused by the disablement.<sup>1</sup> Upon his discharge a disabled soldier appeared before a medical board which made a rough estimate of his decreased earning capacity and awarded a corresponding temporary pension. After a time, perhaps in six months, he would be re-examined, and if his earning power had been increased through training or he had been able to secure remunerative employment, his pension might be decreased.

The new Warrant discarded this principle and based the amount of the pension entirely upon the soldier's rank and the degree of his physical impairment.<sup>2</sup> In a schedule attached to the Warrant certain specific injuries are graded as from 20 to 100 per cent. disabling, and the pensions corresponding to these different degrees of disablement are fixed. For other injuries and for disease it is provided that the pension shall be "assessed at the degree in the schedule which is held most closely to represent the disablement corresponding to the injury or disease."<sup>3</sup> The pension scale ranges for a private soldier from 5s 6d to 27s 6d a week. Men whose disablement is assessed at less than 20 per cent. receive a gratuity, or temporary allowance, depending in amount on the extent of the disablement but not to exceed £200.<sup>4</sup>

The pensions granted under this Warrant may be either permanent or temporary. A permanent pension is granted when the disability is fixed and permanent; that is, when no change for the better or worse may be expected. A temporary pension is granted

<sup>12</sup> FRANCE. *Office National des Muilés et Réformés de la Guerre*. Bulletin no. 1. Année 1916. Paris, 1917, p. 11.

<sup>13</sup> *Ibid.*, p. 167.

<sup>14</sup> FRANCE. *Office National des Muilés et Réformés de la Guerre*. Bulletin no. 3. Premier semestre 1918. Paris, 1918, p. 3.

<sup>1</sup> WILLIAMS, BASIL. *Pensions. Recalled to Life*, London, 1917, i, 97.

<sup>2</sup> GREAT BRITAIN. *Ministry of Pensions*. The drafts of a royal warrant and of an order in council for the pensions of soldiers and sailors disabled and of the families and dependants of soldiers and sailors deceased in consequence of the present war. London, 1917, (cd. 8485), p. 11.

<sup>3</sup> *Ibid.*, art. 1.

<sup>4</sup> *Ibid.*, art. 7.

at the rate appropriate to the temporary disablement when the disablement has not reached its final condition.<sup>5</sup>

These provisions remain unchanged by the Royal Warrant of 1918.

The amount and kind of disablement pension due a man are determined by a Medical Board on the basis of a medical examination and the case history. Men who receive temporary pensions are thereafter re-examined periodically—usually at intervals of from six months to a year—by Medical Boards, and their pensions are reassessed to correspond to any change that may have occurred in the degree of disability. As soon as the condition is judged permanent, a permanent pension is granted.<sup>6</sup> If the disability becomes worse before the time set for re-examination, the Local War Pensions Committee, on the advice of its medical referee, can make advances to the man until the next reassessment.

The Warrant of 1917 states expressly that "when a permanent pension has been granted it shall not be altered on account of any change in the man's earning capacity, whether resulting from training or other cause."<sup>7</sup> The men evidently feared, however, that their temporary pensions might be on reassessment decreased. To reassure them on this point, a pamphlet issued by Major Robert Mitchell, Director of Training for the Ministry of Pensions, on the advantages of training contains this statement: "Let it be distinctly understood that no reduction whatever to your disablement pension can be made on account of anything you may earn. A disablement pension, temporary or permanent, is based solely on the degree of disability and will not in any way be affected by the amount of a man's wages."<sup>8</sup>

A man's earnings come into the question only if he applies for an alternative pension in lieu of a disablement pension. An alternative pension may be granted on application to a man who shows that his minimum pension with children's allowances, added to the earnings of which he remains capable (if any), is less than his pre-war earnings. He may then receive a sum which added to his present average earnings will bring his income up to his pre-war earnings to a maximum of 50s, plus half of any pre-war earnings between 50s and 100s a week.<sup>9</sup>

During a discussion of pensions in Parliament in September, 1917, Mr. Barnes, then Minister of Pensions, was asked by a member: "Is it a fact that the only case in which a Medical Board can ask a man his actual earnings is where they are fixing an alternative pension?" Mr. Barnes' answer, "That is the only case," is unequivocal.<sup>10</sup>

An official statement by the Ministry of Pensions published in the *London Times* of February 20, 1919, takes up the question of alleged reduction of pensions. As a clear and explicit statement of pension procedure it is worth quoting in full.

<sup>5</sup> *Ibid.*, art. 5 (1).

<sup>6</sup> LEFEVRE, J. The handy guide to war pensions, gratuities and allowances. How granted and how obtained. Maidstone, 1918, p. 6.

<sup>7</sup> GREAT BRITAIN. *Ministry of Pensions*. The drafts of a royal warrant and of an order in council for the pensions of soldiers and sailors disabled and of the families and dependants of soldiers and sailors deceased in consequence of the present war. London, 1917, art. 5 (2).

<sup>8</sup> MITCHELL, ROBERT. To disabled sailors and soldiers. A few notes on the advantages of training for your future career. London, 1918, p. 4.

<sup>9</sup> GREAT BRITAIN. *Ministry of Pensions*. The drafts of a royal warrant and of an order in council for the pensions of soldiers and sailors disabled and of the families and dependants of soldiers and sailors deceased in consequence of the present war. London, 1917, art. 3.

<sup>10</sup> *War Pensions Gazette*, London, 1917, i, 57.

It has been repeatedly stated in various quarters that disabled men on going before medical boards have their pensions cut down, the implication being that a deliberate policy of reducing pensions has been instituted. The allegation is entirely unfounded. Disablement pensions are provisionally awarded for a period—it may be three months, six months, or a year—at a rate corresponding to the degree of disability ascertained by medical examination. On re-examination at the end of the period (or before the expiry of the period in some cases, as, for instance, when the man's condition has been reported by the local medical referee to have become worse) the disability may be reassessed.

Disablement pensions being based upon the principle of compensation for injury or disease arising out of war service, a disappearance or abatement of the injury or disease and the return, or partial return, to normal health necessarily involve a corresponding reduction of the pension. Where the pension has been reduced as the result of medical examination it is because the medical board have certified an improvement in health. If, on the other hand, the man's state of health is found to have become worse owing to injury or disease arising out of his war service, a higher rate of pension is awarded. If the deterioration in health occurs before the date originally fixed for re-examination, the local War Pensions Committee, acting on the local medical referee's report, may, until the re-examination, make advances representing the difference between the pension the man is receiving and the pension to which his actual condition would entitle him. These advances are recoverable only when the medical referee's report is upheld.

The re-examination actually takes place some weeks before the expiration of the period for which pension is granted, and improvement in health does not mean an immediate reduction of pension, but a reduction only from the date (some weeks later) when the former pension expires.

It is important to remember that the pensions with which the Ministry of Pensions deals are granted because of disablement, not because of service in the war.

#### BELGIUM

The Belgian pension law of April 5, 1917, was passed as a temporary measure to be superseded when the country should be delivered and restored. There is, therefore, no object in analyzing its provisions.

#### ITALY

The Italian pension law of May 20, 1917, divides disabilities into ten classes according as they diminish the man's capacity for profitable work from 10 to 100 per cent. A man with a disability which falls into one of the first eight classes receives a life pension of from 378 to 1,260 lire a year, with supplementary allowances if he is totally disabled and needs an attendant. For disabilities of the ninth and tenth classes a temporary allowance equal to a pension of the eighth class is granted for a period of from six months to six years.<sup>1</sup>

When the gravity of the disability or its permanent character cannot be definitely determined, the law authorizes the grant of a temporary pension based on the regular pension scale. This may be granted for a period of not less than one year or more than five; at the end of the allotted period it may be renewed, converted into a life pension, or discontinued. After eight years have passed, the condition must be considered permanent and the pension either made permanent or discontinued.<sup>2</sup>

<sup>1</sup> *Per le pensioni privilegiate di guerra. Rassegna di Assicurazioni e Previdenza Sociale*, Roma, 1917, iv, 1268-1285.

<sup>2</sup> *Ibid.*, p. 1272.

A large number of specific disabilities are listed under the ten classes, but the law recognizes that there will be cases not therein included and provides that these shall be "ascribed to the class which contains disabilities causing an equivalent diminution of the capacity for profitable work."<sup>3</sup> Additional directions on the assessment of non-specified disabilities are contained in a circular issued by the Inspector of the Military Health Department to the District Directors of the Department. This directs the examining doctors whose duty it is to determine "by analogy" the class of non-specified disabilities to base their decision upon a consideration of the "diminished functional ability resulting from loss of organs, limbs, or parts of limbs or from functional disturbances."<sup>4</sup>

It is evident, therefore, that the amount of the pension depends on the doctors' estimation of the physical disability. That it may not be reduced on account of anything the man may earn is expressly stated in article nineteen of the pension law, which reads: "In accordance with the present law there can be no change in the pension granted to a disabled soldier whatever degree of re-education he may have attained or whatever employment he may have secured."<sup>5</sup> False reports on this matter have created in the Italian soldier as in his comrades of the other warring countries a reluctance to take training, and it has been necessary for the government to combat these reports by numerous published statements. For example, a propaganda booklet issued by the 'National Board' to inform disabled soldiers of government measures in their interest contains the following: "Disabled soldiers should know that the pensions granted them by the state can never be in any way diminished or discontinued whatever the recipients may earn by their labor or employment."<sup>6</sup>

#### CANADA

Canadian pensions are divided into twenty classes and are awarded in direct proportion to the degree of disability, which is graded from 5 to 100 per cent. The amount of a pension of the first class, or a 100 per cent. disability pension, is \$600 a year; of a class 20 pension, for 5 per cent disability, \$30. A permanent disability of less than 5 per cent. entitles to a gratuity of not more than \$100.<sup>1</sup>

A man's percentage of disability is determined by the Board of Pension Commissioners on the basis of a report of his medical examination before discharge and other details of his condition. The percentage that any disability bears to total disability has been carefully calculated by experts.<sup>2</sup> For example, in the case of pulmonary tuberculosis the following table has been drawn up to serve as a guide in estimating the disability percentage:

<sup>1</sup> *Ibid.*, p. 1270.

<sup>2</sup> *Ibid.*, p. 1284.

<sup>3</sup> *PROTEZIONE ed assistenza degli invalidi della guerra. Rassegna di Assicurazioni e Previdenza Sociale*, Roma, 1917, iv, 970.

<sup>4</sup> *OPERA NAZIONALE PER LA PROTEZIONE e L'ASSISTENZA DEGLI INVALIDI DELLA GUERRA. Agli invalidi della guerra.* Roma, 1918, p. 13.

<sup>5</sup> *CANADA. Parliament.* Pension regulations for those serving in the naval forces of Canada and the Canadian expeditionary force during the present war. Ottawa, 1917.

<sup>6</sup> *Reconstruction*, December, 1918, p. 12.



TABLE FOR ESTIMATING INCAPACITY IN PULMONARY TUBERCULOSIS

N.B. When it is considered advisable, medical officers will make an estimate of disability graded at any percentage other than that named in the table. The terminology used, and its assigned interpretation, is that employed by the National Association for the Prevention of Tuberculosis.

Class	Condition	Clinical Description	Employability	Percentage of Disability
1	Not improved			100
2	Improved	Where there has been improvement sufficient to allow the use of the term.	These cases will, in all likelihood, relapse on any but the lightest kind of work. During the first six months, at least, disability should be considered as total.	100
3	Quiescent	No constitutional symptoms; tubercle bacilli may be present or not; stationary or better in physical signs, all the foregoing having been present at least two months.	Practically an active case under ordinary conditions of life, and should rest at least 75 per cent. of his time, in order to carry on in fair health—hence a minimum of 80 per cent. for the first six months.	80-100
4	Apparently arrested	Signs of a healed lesion without any symptoms for three months.	Should rest half of his time.	50-80
5	Arrested	Signs of a healed lesion without relapse at end of six months under ordinary living conditions.	Should rest one-quarter of his time.	25-50
6	Apparently cured	Signs of a healed lesion without relapse at end of two years under ordinary living conditions.	Only limitation of employability is that he should avoid certain occupations involving undue exposure to dust and debilitating conditions.	

NOTE. In estimating disability the fibrosis and destruction of lung tissue, debility, and tendency to relapse must be taken into account.

All pensions, except in those cases where the disability is obviously permanent, are subject to periodical review. If, in reviewing a case, the medical advisors of the Board of Pension Commissioners find that the man's condition has improved or grown worse, they reduce or raise the estimate of his disability percentage, and he receives a corresponding decrease or increase of pension. "A pension lasts as long as the disability for which it was awarded exists."<sup>3</sup>

Increased earnings cannot effect a reduction of the pension. On this point the Pension Regulations contain the following explicit statement: "No deduction shall be made from the amount awarded to any pensioner owing to his having undertaken work or perfected himself in some form of industry."<sup>4</sup> In other words, to quote *Reconstruction*, the official bulletin of the Department of Soldiers' Civil Re-establishment: "A pension is compensation for disability, not payment for incapacity in any particular line or branch

<sup>3</sup> *Reconstruction*, December, 1918, p. 13.

<sup>4</sup> CANADA. *Parliament*. Pension regulations for those serving in the naval forces of Canada and the Canadian expeditionary force during the present war. Ottawa, 1917, p. 4.

of work—so a pensioner need not worry that his pension will be reduced if and when he finds employment, or fits himself for a trade, or takes up any other means of earning a livelihood."<sup>4</sup>

## GERMANY

The German war pensions for privates and non-commissioned officers are governed by the pension law of 1906. Under this law the pension is composed of several parts. There is, in the first place, the military annuity (*Militärrente*), which is a pension varying according to the degree of disability and to military rank. The law fixes for each rank the amount of the annuity for total disability, and the annuity is in each case granted as a percentage of that amount according to the degree of disability as determined by the military medical pension boards. No annuity is paid if the disability is less than 10 per cent.

There are, in addition, several supplementary allowances. The war allowance (*Kriegszulage*) is paid to all those who are entitled to the military annuity as a result of disability incurred in and as a result of war service; its amount (fifteen marks monthly) is fixed irrespective of the degree of disability and of military rank.

The disability allowance (*Verstümmelungszulage*) is also paid as a fixed monthly amount (twenty-seven marks), irrespective of military rank, to those who have suffered certain serious injuries: the loss of a hand, of a foot, the loss of speech, deafness in both ears. Men blinded in both eyes receive a double allowance, as do also those who have lost two limbs; in fact, the allowance is cumulative, and a soldier who has been totally blinded and, in addition, has lost both arms and both legs, should receive six times the normal amount.<sup>1</sup> The allowance may also be granted whenever the use of a limb has been impaired to such an extent as to make the impairment equivalent to a loss of the limb; or when one eye has been lost and the other has a vision less than one-half of normal; or when the man has suffered any other serious impairment of his health that necessitates permanent attendance by another person; in cases of mental disease requiring institutional treatment or of serious illness the amount of the allowance may be increased up to fifty-four marks a month.

There are also allowances of a less general importance, as, for instance, the old age allowance (*Alterszulage*) which is given to men of fifty-five years and over whose annual income is less than 600 marks; the air service allowance (*Luftdienstzulage*); the tropical service allowance (*Tropfenzulage*), and so on.

Of the several component parts of the pension, one, namely the war allowance, cannot be reduced under any circumstances and is paid as a fixed amount as long as the military annuity is paid, that is as long as there is a disability of 10 per cent. or more.

The disability allowance may be granted either permanently, if the injury may by its nature be expected to be permanent, or for the duration of the injury. The former is evidently the case for amputations. On the contrary, the allowance may frequently be but temporary when granted for serious disease; in this case, moreover, the granting is optional with the authorities, and the man has no legal claim to the allowance.

<sup>1</sup> *Reconstruction*, December, 1918, p. 13.

<sup>1</sup> SCHWEYER, FRANZ. *Deutsche Kriegsflüßsorge*. Berlin, 1918, p. 75.

The military annuity is subject to revision and may, upon an application of the recipient or by a ruling of the authorities, be increased, reduced, or withdrawn, if there has been a "substantial change" in the conditions that determined its being granted. Applications for an increase of the annuity may be made at any time. A downward revision or a withdrawal may take place only once in a year.<sup>1</sup> "Substantial change" has been defined in instructions issued in 1909 as a change in the degree of disability equal to at least 10 per cent. of total disability.<sup>2</sup>

The pension is thus partly fixed and partly variable, and the relative importance of the two portions varies according to individual cases. In amputation cases the portion that remains fixed will, as a rule, be considerable. Thus, for instance, a private who has lost a limb and whose disability has been estimated at 50 per cent., is granted an annuity of 270 marks, which will be liable to revision with every change in his condition; against this the portion that will remain fixed is equal to the combined amount of the war and disability allowances, namely 504 marks. On the contrary, in cases of internal disease no disability allowance is granted as a rule, and consequently the variable portion of the pension bears a much higher ratio to the fixed one.

The question as to whether the amount of the annuity depends upon the man's physical condition only, or whether and to what extent it may be affected by the fact of his employment and by an increase in his earnings, cannot be definitely answered. To denote the disability on which the annuity is based, the pension law uses the term *Erwerbsunfähigkeit*—incapacity for gainful work. This is frequently interpreted as referring to physical incapacity only. Thus, one of the foremost authorities on the problem of the disabled soldier states that "a substantial change cannot be seen in the fact alone that the disabled soldier is able to work for wages or that he succeeds in the course of time in attaining better wage conditions. We only have such a change when the physical condition of the man has permanently and substantially improved."<sup>3</sup> The same interpretation, though in a less categorical form, is given in a pamphlet issued by the Prussian War Ministry for the information of disabled soldiers: "The evaluation of the degree of incapacity is based *mainly* upon the physical condition of the injured as determined by the injury, and not upon his general condition or upon his trade activities or the earnings derived from them. The supposition that the resumption of trade activities may *in itself* have as a result a decrease or a withdrawal of the pension is altogether wrong."<sup>4</sup>

In determining the degree of incapacity in amputation cases the effect of artificial limbs is taken into consideration. A higher temporary pension may be granted while the man is waiting for adequate artificial limbs to be supplied.<sup>5</sup>

On the other hand, it was possible to no less an authority than Professor Konrad Biesalski to state that the annuity "is fixed according to the impairment of the earning

<sup>1</sup> GERMANY. *Preussisches Kriegsministerium*. Übersicht über Versorgungs- und Fürsorge-Angelegenheiten der Mannschaften. Berlin, 1918, p. 14.

<sup>2</sup> ADAM, M. *Mannschaftsversorgung*. Berlin, 1918, p. 68-69.

<sup>3</sup> SCHWEYER, FRANZ. *Deutsche Kriegsfürsorge*. Berlin, 1918, p. 78.

<sup>4</sup> GERMANY. *Preussisches Kriegsministerium*. Übersicht über Versorgungs- und Fürsorge-Angelegenheiten der Mannschaften, Berlin, 1918, p. 6.

<sup>5</sup> *Ibid.*, p. 15.

capacity, just as in the case of industrial accidents, and this annuity may under circumstances be withdrawn, namely when the man works and thus proves that his earning capacity is no longer limited."<sup>7</sup>

As a matter of fact, though it has been generally recognized in Germany that the 'pension psychosis' is the greatest obstacle to the rehabilitation of the disabled, and though continuous efforts have been made to overcome it by dispelling the idea that rehabilitation means a decreased pension, there never has been given a definite pledge, such as those given in France or in Italy, that the pension would under no circumstances be affected by the earnings. The assurances that have been given in Germany are much more moderate and more cautious.

A Prussian ministerial circular of September, 1915, states that "a decrease or a withdrawal of the annuity can only take place in the case of a substantial increase of the earning *capacity* [underlined in the text]; to what extent employment in a gainful occupation may be considered as proof of such an increase cannot be stated in a general way." The circular further points out that the payment of the war allowance will continue as long as the earning capacity of the man is impaired to any measurable extent; no change in the amount of the disability allowance is as a rule possible. Therefore in cases of amputation, for instance, the man, "in addition to an annuity corresponding to the degree of disability," will receive the two supplementary allowances, "irrespective of the income he may derive from gainful employment." "The authorities concerned have been requested, in order to facilitate an unimpeded return of the disabled to civilian life and not to interfere with their vocational training and readaptation to work, which in some cases may require considerable time, not to fix too short periods for the revision of the pension."<sup>8</sup>

In the official publication of the Prussian War Ministry devoted to the problems of disabled soldiers we find mention of several provisions made to overcome the apprehension of the men that to take up remunerative work may mean a reduction or a loss of the pension; these provisions include assurance given to the men who may take up work before the pension procedure has been completed that their earnings during the intervening period will not affect the amount of the pension; the maintaining of the principle that revisions shall not take place more than once a year and a recommendation to extend this period, whenever this may be necessary, to two or three years or even more; the issuing of special certificates to those men whose injury does not permit to expect a restoration of their earning capacity to over 90 per cent. of normal, to the effect that no complete withdrawal of their pension will ever take place.<sup>9</sup>

Paul H. Perl, of the Siemens-Schuckert plant, who has been active in readapting disabled soldiers to factory work gives the following statement of the relation of the pension to earning capacity: "The idea is frequently found among disabled soldiers that they will lose their pension if they enter employment. This idea is wrong. The war allowance continues as long as there remains any reduction of earning capacity due to war service; the disability allowance is paid as long as there is disability, which, as a

<sup>7</sup> BIESALSKI, KONRAD. Die ethische und wirtschaftliche Bedeutung der Kriegskrüppelfürsorge. Leipzig, 1915, p. 17-18.

<sup>8</sup> FECHNER. Die Hinterbliebenen- und Kriegsbeschädigten-Fürsorge in Kriegs- und Friedenszeiten. Berlin, 1915, III, 5-7.

<sup>9</sup> VON LANGEMAN and ERLKAMP. Versorgungsfragen im Kriege. Amtliche Mitteilungen für Kriegsbeschädigte oder versorgungsberechtigte Militärpersonen und für Hinterbliebene von Heeresangehörigen. Berlin, 1917, I, 45.

general rule, means for life. As to the military annuity, it can only be decreased or withdrawn if there has taken place a *substantial change* in the condition that had determined the granting of the pension. Substantial change there is when the physical condition of the disabled man has substantially improved, or when he has become so much accustomed to his sickness or infirmity that the impairment of his earning capacity has become less, as, for instance, through habituation to artificial limbs, or when his earning capacity has increased through additional training. A decrease of the pension is always conditioned upon the change in the degree of disability being of at least 10 per cent. The military administration has repeatedly assured that the prescriptions regarding the change of the amount of the pensions of the disabled would be enforced with the greatest benevolence. No disabled soldier should fear that his annuity might be reduced by the amount of his wages."<sup>10</sup>

There is one provision in the pension law by which the amount of the pension is directly affected by the fact of employment. If, namely, the disabled man enters civil service the payment of the portion of his pension which is equal to 20 per cent. or less of that for total disability, and of that portion which exceeds 60 per cent. of that for total disability, is suspended for the duration of his employment. However, an order of the Imperial Chancellor, issued during the war, has exempted from this provision all state and municipal employees.<sup>11</sup>

In direct relation to earnings is the so-called supplementary pension (*Zusatzrente*) which may under certain conditions be paid out of a special fund created during the war to disabled soldiers to cover the difference of their pre-war earnings and their present total income.<sup>12</sup>

<sup>10</sup> PERLS, PAUL H. Wiederertüchtigung schwerbeschädigter Kriegsteilnehmer in der Werkstatt. *Zeitschrift für Krüppelfürsorge*, Leipzig, 1917, x, 298-299.

<sup>11</sup> *Fürsorge für Kriegsteilnehmer*, Berlin, 1917, iii, 165.

<sup>12</sup> *Vom Krieg zur Friedensarbeit*, Berlin, 1917, iii, 35; SCHWEYER, FRANZ. *Deutsche Kriegsfürsorge*, Berlin, 1918, p. 99.

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